

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Dorsey & Whitney LLP,

Plaintiff,

ORDER

v.

ALLCO Finance Corporation,

Civil No. 04-5011 (MJD/JGL)

Defendant.

Perry M. Wilson III, Bricker Lavik, Dorsey & Whitney LLP, Counsel for Plaintiff.

Thomas M. Melone, Allco Finance Corp., Counsel for Defendant.

In this dispute between Plaintiff Dorsey & Whitney LLP (“Dorsey”) and Defendant Allco Finance Corporation (“Allco”), regarding payment for Dorsey’s services, the Complaint claims diversity jurisdiction under 28 U.S.C. § 1332. The parties now agree that this Court lacks jurisdiction under that section because Allco is a Nevada corporation with its principle place of business in New York, and Dorsey has 70 attorneys in New York—thereby eliminating diversity.

The law is clear that “dismissal for lack of jurisdiction is not an adjudication on the merits and thus such a dismissal should be without prejudice.” Ahmed v. United States, 147 F.3d 791, 797 (8th Cir. 1998) (citing Fed. R. Civ. P. 41(b)); see County of Mille Lacs v. Benjamin, 361 F.3d 460, 465-66 (8th Cir. 2004) (“Because the district court dismissed solely on jurisdictional grounds, dismissal with prejudice is premature.”).

Further, Defendant's request for sanctions, presumably under Rule 11, must fail because it has failed to make that request under a separate motion. Gordon v. Unifund CCR Partners, 345 F.3d 1028, 1029 (8th Cir. 2003) ("[Rule 11] provides that requests for sanctions must be made as a separate motion, *i.e.*, not simply included as an additional prayer for relief contained in another motion.") (quotation omitted).

Based upon the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that

1. Plaintiff's Motion to Strike Unsolicited Memoranda [Docket No. 22] is **DENIED**.
2. Defendant's Amended Motion to Dismiss [Docket No. 26] is **GRANTED**;
3. Defendant's request for sanctions is **DENIED**; and
4. This case shall be **DISMISSED WITHOUT PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: July 13, 2005

s/ Michael J. Davis
Judge Michael J. Davis
United States District Court